(19)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
(DIVISION BENCH)

CORAM : **Hon'ble Shri S.R. Nayak, CJ**
Hon'ble Shri Satish K. Agnihotri, J.

M.A. No. 836 OF 2005

APPELLANT/CLAIMANT

Rajkumar Patel, aged 32 years, S/o. Harunlal Patel, R/o. Vill. Belari, P.S. Shivrinarayan, Tahsil & District-Janjgir-Champa (C.G.)

Versus

RESPONDENTS/NON-APPLICANTS

1) Suresh Kumar, S/o. Salku Baiga, Aged about 30 years, R/o. Vill. Jyotipur, P.S. Pendra Road, District Bilaspur (C.G.)
At present-Near Bhanpur Ramani Petrol Pump Hindustan Transport, P.S. Bhanpur, District Raipur (C.G.)

2) Rajendra Kumar Saluja, S/o. Shri Anantram Saluja, R/o. Om Complex, Fafadih, Raipur (C.G.)

3) The National Insurance Company Ltd., Through Branch Manager, Branch City Branch-2, II-Flor, Movil Mahal, G.T.Road, Raipur, Distt. Raipur (C.G.)

4)a. Smt. Tejkor, Wd./o. Triloksingh Gandhi, R/o. Pamgarh, P.S. Tahsil Pamgarh, Distt. Janjgir-Champa (C.G.)

4)b. Satendar Singh, S/o. Late Triloksingh Gandhi, R/o. Pamgarh, P.S. Tahsil Pamgarh, Distt. Janjgir-Champa.(C.G.)

5) The Oriental Insurance Co. Ltd, Through Branch Manager,Opp. High Court, Bilalspur Tah. & Distt. Bilaspur (C.G.)

Present: Mr. Goutam Khetrapal, learned counsel for the appellant.

ORAL ORDER
(Passed on 12th of December 2005)

The following Order of the Court was passed by

S.R.Nayak, CJ:

In a personal injury case, the MACT having found that the appellant/claimant has sustained grievous injuries in the accident occurred on 16.08.99 involving the motor vehicle driven by the appellant himself as well as the driver of the truck-trailer insured by Oriental Insurance Company-respondent No. 5 and in causing the accident, both the dirivers contributed negligence, apportioned negligence in the ratio of 30 : 70 and having computed the total entitlement of the appellant in a sum of Rs. 48,000/- and out of which deducting 30% of the same, ultimately, awarded a sum of Rs. 33,600/-. The argument of the learned counsel for the appellant is that the MACT is not justified in holding that the appellant too, contributed the negligence in causing the accident. The contention of the learned counsel is not acceptable to us. The MACT in para 14 of the judgment, in great elaboration, has stated the reasons for concluding that the appellant also contributed negligence in causing the accident. It is seen that the appellant did not exercise due care and caution to avert the accident and if he were to exercise due care and caution, in the facts and circumstances established in the case, perhaps the accident could have been averted. Therefore, it cannot be said that the finding recorded by the MACT and apportioning the actionable negligence to an extent of 30% on the part of the appellant/driver cannot be faulted with. No other point is urged before us to assail the validity of the impugned award. The appeal is devoid of merit and it is accordingly dismissed. There shall be no order as to costs.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Subby